

**FILED**

JUL 23 2008



CLERK

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA

WESTERN DIVISION

JAMES H. ARCHAMBAULT,	)	CIV. 07-5087-RHB
	)	
Petitioner,	)	
	)	
vs.	)	ORDER
	)	
DOUGLAS WEBER,	)	
Warden, S.D. State Penitentiary,	)	
	)	
Respondent.	)	

On November 29, 2007, petitioner filed for habeas relief in federal court pursuant to 28 U.S.C. § 2254. Docket #1. In an Order issued on May 21, 2008, the Court summarily dismissed the petition on the basis that all of the issues raised therein were frivolous. Docket #27. On June 16, 2008, petitioner filed a notice of appeal. Docket #32.

Subsequent to the notice of appeal, petitioner has filed five motions: 1) a motion to stay (Docket #36); 2) a motion to appoint counsel (Docket #37); 3) a motion for a certificate of appealability (Docket #39); 4) a second motion to stay (Docket #43); and 5) a motion for reconsideration (Docket #43). Petitioner also moves for leave to proceed *in forma pauperis* on appeal. Docket #44.

**A. First Motion to Stay (Docket #36)**

Petitioner's first motion to stay seeks additional time for the Court to "properly

review the financial records around [petitioner's] prisoner trust account report." Petitioner has since submitted his prisoner trust account report, and the Court has all of the documentation it needs to make a ruling on petitioner's motion for leave to proceed *in forma pauperis* on appeal. Thus, this motion is moot, and shall accordingly be dismissed as such.

**B. Motion to Appoint Counsel (Docket #37)**

"[T]here is neither a constitutional nor statutory right to counsel in habeas proceedings." McCall v. Benson, 114 F.3d 754, 756 (8<sup>th</sup> Cir. 1997). Instead, when ruling on a motion to appoint counsel, the Court must consider several factors. These factors include "the factual and legal complexity of the case, and the petitioner's ability both to investigate and to articulate his claims without court appointed counsel." Id. A petitioner who demonstrates "at least a threshold ability to articulate his claims" is capable of self-representation. Id.

The issues raised by petitioner in this matter are neither factually nor legally complex, and petitioner has demonstrated, through numerous submissions in the form of letters and supplements, a threshold ability to articulate his claims without the assistance of counsel. Thus, the Court concludes that court-appointed counsel is unwarranted. Petitioner's motion to appoint counsel is denied.

**C. Motion for Certificate of Appealability (Docket #39)**

Pursuant to 28 U.S.C. § 2253(c)(2), a certificate of appealability is warranted only

when "the applicant has made a substantial showing of the denial of a constitutional right." Upon consideration, the Court concludes that petitioner has not met this standard. Thus, petitioner's motion for certificate of appealability is denied.

**D. Second Motion to Stay (Docket #43)**

After petitioner filed a notice of appeal, he filed a motion to stay the appeal so that the Court could address his post-appeal motion for reconsideration. Petitioner appears to request that Chief Judge Schreier review this matter before the Eighth Circuit Court of Appeals. There is no rule of appellate procedure that allows for an appeal to the Chief Judge of a federal district. Moreover, this Court no longer has jurisdiction over substantive matters related to petitioner's appeal. Thus, petitioner's second motion to stay is dismissed as moot.

**E. Motion for Reconsideration (Docket #43)**

As noted above, the Court no longer has jurisdiction to rule upon substantive matters related to petitioner's case. Thus, petitioner's motion for reconsideration is dismissed as moot.

**F. Motion for Leave to Proceed *In Forma Pauperis* (Docket #44)**

Petitioner has submitted a prisoner trust account. Based upon the information included therein, the Court will grant petitioner's motion for leave to proceed *in forma pauperis* on appeal.

**G. Conclusion**

Based upon the foregoing discussion, it is hereby

ORDERED that petitioner's first motion for stay (Docket #36) is dismissed as moot.

IT IS FURTHER ORDERED that petitioner's motion to appoint counsel (Docket #37) is denied.

IT IS FURTHER ORDERED that petitioner's motion for certificate of appealability (Docket #39) is denied.

IT IS FURTHER ORDERED that petitioner's second motion to stay (Docket #43) is dismissed as moot.

IT IS FURTHER ORDERED that petitioner's motion for reconsideration (Docket #43) is dismissed as moot.

IT IS FURTHER ORDERED that petitioner's motion for leave to proceed *in forma pauperis* on appeal (Docket #44) is granted.

Dated this 23<sup>rd</sup> day of July, 2008.

BY THE COURT:

  
RICHARD H. BATTEY  
UNITED STATES DISTRICT JUDGE